IN THE HIGH COURT OF JUDICATUE AT BOMBAY
NAGPUR BENCH, NAGPUR.

Second Appeal No. 441 of 2007
Vinayak N. Sagre & 2 ors..vs.. Shri Madhao G. Hajare & anor.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Courts or Judge's Orders.

CORAM : Smt. Vasanti A. Naik, J.
Dated : 12/09/2007

Heard Mr. Amol Mardikar, learned counsel for the appellants.

The appellants are the original defendants. A suit was filed by the plaintiffs/respondents for declaration that they have right of way through the fields of the defendants and that the defendants may be restrained from obstructing the plaintiffs in using cart- way shown in the plaint map by letters **A, B, C, D, E**. The plaintiffs also sought for mandatory injunction.

The defendants denied the claim of the plaintiffs and pleaded that the cart-way shown in the plaint map was not available to the plaintiffs. It was further pleaded by the defendants that there was some other convenient way available to the plaintiffs and despite of aforesaid fact, the plaintiffs were unnecessarily claiming right of the way through the fields of the defendants. According to defendants, the suit way was not available to the plaintiffs at any point of time and the plaintiffs could not have claimed that they have a right to use the suit way

by easement of prescription.

The Trial Court as well as the first Appellate Court after considering evidence tendered by the parties on record held that the plaintiffs had succeeded in proving that they were using the suit way for more than 30 years and therefore, they had easementary right by prescription to use the suit way. Both the Courts held that though there was another alternate way available to the plaintiffs to approach their fields, the claim of the plaintiffs could not have been rejected as the plaintiffs case was not based solely on claiming easementary right by necessity but had claimed easementary right by prescription. The Courts rightly appreciated oral as well as documentary evidence on record to decree the suit of the plaintiffs. The findings recorded by both the Courts are pure finding of facts, which do not give rise to any substantial questions of law.

The second appeal is dismissed with no order as to costs.

JUDGE

JSA.